

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TIAN YUN PAN	:	CIVIL ACTION
v.	:	
HONORABLE JOHN ASHCROFT,	:	
UNITED STATES ATTORNEY	:	
GENERAL	:	NO. 02-2712

MEMORANDUM AND ORDER

ROBERT F. KELLY, J.

AUGUST 19, 2002

Tian Yun Pan (“Pan” or “Petitioner”) has filed a Motion for Reconsideration of our Order entered July 8, 2002 dismissing his Petition in the above-captioned case. We held that Zadvydas v. Davis, 533 U.S. 678, 121 S. Ct. 2491 (2001) did not apply to Pan because he entered the country illicitly and was never admitted.

In his Motion for Reconsideration, Pan argues that Regulation 8 CFR 241.13¹ entitles him to the relief that he seeks. However, the Regulation contains the following exclusion:

¹The purpose of § 241.13 is contained in the first subsection, which says:
(a) Scope. This section establishes special review procedures for those aliens who are subject to a final order of removal and are detained under the custody review procedures provided at § 241.4 after the expiration of the removal period, where the alien has provided good reason to believe there is no significant likelihood of removal to the country to which he or she was ordered removed, or to a third country, in the reasonably foreseeable future.
8 CFR § 241.13 (West 2002).

(b) Applicability to particular aliens.

(3) Limitations. This section does not apply to:

(I) Arriving aliens, including those who have not entered the United States, those who have been granted immigration parole into the United States, and Mariel Cubans whose parole is governed by § 212.12 of this chapter;

Pan is considered an “arriving alien,” that is, an alien never admitted and therefore the Regulation has no application to his case.

Moreover, as the Government points out in its Brief, there has been no determination that Pan cannot be removed. The Peoples Republic of China does take its citizens back and has not affirmatively refused to take Pan.

For these reasons, we enter the following Order.

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O R D E R

AND NOW, this 19th day of AUGUST, 2002, the Motion for Reconsideration is
DENIED. This case is CLOSED.

BY THE COURT:

ROBERT F. KELLY, Sr. J.